

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

WESLEY TURK,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 4:18-cv-01657-AGF

**MEMORANDUM AND ORDER**

This matter comes before the Court on its own motion. On March 13, 2019, the Court directed movant to file his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 on a Court-provided form. Movant was given thirty days to comply. He has not filed a response. Thus, for the reasons discussed below, the Court will dismiss this action for failure to comply with the Court's order. *See* Fed. R. Civ. P. 41(b).

**Discussion**

On September 27, 2018, movant filed a document with the Court requesting that the Court appoint him an attorney to file a motion based on the United States Supreme Court case of *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018). Alternatively, movant requested that he be sent the paperwork so that he could file a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 himself. Movant also asked that he be sent a copy of the following: his docket sheet; a form to file a civil rights complaint pursuant to 42 U.S.C. § 1983; a form to file a motion to proceed in forma pauperis; and a form to file a motion to request the appointment of counsel.

On January 2, 2019, the Court directed the Clerk of Court to send movant a copy of the Court's § 2255 form. (Docket No. 2). Movant was given thirty days in which to fill out the

Court-provided form and file his motion in the present action. The Court noted that movant's failure to file the motion would result in the dismissal of this action without prejudice.

Mail to movant was returned undeliverable on January 22, 2019. (Docket No. 3). The documents were resent to movant's new address. On February 4, 2019, the Court received a letter from movant. (Docket No. 4). In the letter, movant stated that he had received the forms that the Court ordered sent to him, to wit: a 28 U.S.C. § 2255 form; a 42 U.S.C. § 1983 form; a motion to proceed in forma pauperis form; a motion to appoint counsel form; and a copy of the docket sheet. Movant also stated that "this is the first time I am hearing about any of this."

Based on movant's response, it was unclear whether he required more time to file his § 2255 motion, or whether he did not intend to file such a motion in the first place. As such, the Court directed the Clerk of Court to resend a § 2255 form to movant. (Docket No. 5). The Court also instructed movant that if he desired to file a § 2255 motion in this case, he must fill out the form, following the directions contained therein. Movant was given thirty days from the date of the order to comply. He was advised that if he did not file a motion, the Court would dismiss this action without prejudice and without further notice.


More than thirty days have elapsed since the Court's order of March 13, 2019, and nothing more has been filed in this case. Therefore, this action will be dismissed for failure to comply with the Court's order. *See* Fed. R. Civ. P. 41(b).

Accordingly,

**IT IS HEREBY ORDERED** that this action is **DISMISSED** without prejudice. *See* Fed. R. Civ. P. 41(b). A separate order of dismissal will be entered herewith.

**IT IS FURTHER ORDERED** that the Court will not issue a certificate of appealability.

Dated this 7th day of May, 2019.

  
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AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE